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SUSAN Y. SOONG
CLERK, US DISTRICT COURT
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

RS

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| Oampai Sangyimphan<br><br>Plaintiff<br><br>vs.<br><br>Sherry Tsai, Mark Draheim<br><br>Defendants | CASE NO: CV 17 2152<br><br>**COMPLAINT**<br>1. Wrongful Termination<br>2. Intentional Infliction of Emotional Distress<br>3. Negligent Infliction of Emotional Distress<br>4. Age Discrimination In Employment Act of 1967<br>5. Equal Pay Act of 1963<br>6. Discrimination Based on Disability<br>7. Jury Trial Demanded |

## INTRODUCTION

**PLAINTIFF COMPLAINS AND THIS COURT SHOULD RULE IN FAVOR OF PLAINTIFF'S COMPLAINT AND ALLEGATIONS FOR THE FOLLOWING REASONS:**

## COMMON LAW DOCTRINE

Plaintiff requests that this Court follow the Common Law Doctrine when deciding on Plaintiff's Causes of Action. Plaintiff is pro se, and Plaintiff will have a fair chance of justice, if this court follows the Common Law Doctrine.

## STATEMENT OF FACTS

1. Plaintiff, Oampai Sangyimphan, was employed by Defendants, Sherry Tsai, an individual, and Mark Draheim, an individual, severally and as joint employers, to perform personal services as a nanny and housekeeper for Defendants' two children in San Mateo County

under the terms of an oral agreement at the promised rate of $1,500.00 per month. Plaintiff worked for Defendants from February 2010 to January 21, 2013.

2. Plaintiff was employed by Defendants for over two and half years, and Plaintiff was an employee in good standing. Plaintiff received a promotions and raises.
3. Plaintiff was discharged due to her age and disability.
4. Plaintiff worked very hard for Defendants, and they just took advantage of Plaintiff, and then wrongfully terminated Plaintiff.

Disability Discrimination In Employment in violation of California Govt. Code section 12940(a), Failure to Engage in Interactive Process in violation of California Govt. Code section 12940(n), Failure to Accommodate Disability in violation of Cal Govt. Code Section 12940 (m), Retaliation in violation of California Govt. Code section 12940(f), Wrongful Termination in Violation of Public Policy in violation of Cal Govt. Code Section 12940, Wrongful Termination Violation of CFRA in violation California Govt. Code section 12945.2(1), Retaliation in Violation of CFRA, Cal Govt. Code section 12945.2.

## Age Discrimination in Employment Act of 1967

This act prohibits discrimination in regards to any aspect of employment against individuals over the age of 40 because of their age. The **Older Worker's Benefits Protection Act of 1990** specifies this Act to include provisions against age discrimination for benefits.

Here, Plaintiff was discriminated against by Defendants because of her age. Defendants wanted to hire someone younger, and they ended up terminating Plaintiff's Employment.

## Equal Pay Act of 1963

This act prohibits wage discrimination based on gender if the job is under the same employer and general work conditions, and requires equal proficiency and responsibility. Defendants were underpaying Plaintiff the first day and the last day she worked for Defendants. Defendants violated the Equal Pay Act of 1963.

1. Plaintiff has been the *victim of discrimination* because of her age and disability.

2. Plaintiff was terminated after *complaining* about harassment or some other form of discrimination.

3. Plaintiff was terminated in violation of a *contract* or explicit promise concerning the duration of her employment or the circumstance under which she could be terminated.

4. Plaintiff was terminated for *refusing to perform an illegal or unsafe act* for Defendants. Plaintiff was being forced to work extensive hours by Defendants without fair pay.

5. Defendants *violated their termination policies* by not giving any warnings that Plaintiff was not doing a good job, and that Defendants were going to wrongfully terminate her.

6. Plaintiff believes it is going to take many months or years to find comparable employment and thus the *economic harm* Plaintiff is going to suffer is *significant*.

7. Plaintiff has sustained serious *emotional injuries* as a result of how she was treated at work by Defendants.

8. Plaintiff *worked* for the Defendants for *many years*, and Plaintiff deserved better treatment and Plaintiff did not deserve to be wrongfully terminated.

Foley v. Interactive Data Corp. (1988) 47 Cal.3d 654, 655). Thus, an exception to the general at-will employment presumption is made and a tortious wrongful discharge claim will lie where an employer's termination of an employee violates a fundamental public policy, or in other words, where "he or she is discharged for performing an act that public policy would encourage, or for refusing to do something that public policy would condemn." (*Gantt v. Sentry Insurance* (1992) 1 Cal.4th 1083, 1090; *Green v. Ralee Engineering Co.* (1998) 19 Cal.4th 66, 79-80; *Tameny v. Atlantic Richfield Co.* (1980) 27 Cal.3d 167). Therefore, unless the employee has an actual or implied contract with the employer which allows for termination only for cause or other specified reasons, the employer may fire an employee as long as the reasons are not illegal. Here Defendants terminated Plaintiff for illegal reasons.

**Age Discrimination & Harassment**

It is unlawful to harass a person because of his or her age. Harassment can include, for example, offensive remarks about a person's age. Although the law doesn't prohibit simple teasing, offhand comments, or isolated incidents that aren't very serious, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted).

The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer. Here, Defendants created a hostile work environment by working client to many hours in a day and by making physical gestures at Plaintiff making client be in fear that Defendant was going to strike Plaintiff at any moment. It was very hard for Plaintiff to work under these conditions.

Age Discrimination & Employment Policies/Practices

An employment policy or practice that applies to everyone, regardless of age, can be illegal if it has a negative impact on applicants or employees age 40 or older and is not based on a reasonable factor other than age (RFOA). Here Defendants Employer Policies and Practices were illegal because they had a negative impact on Plaintiff who is over 40 years old.

In enacting the ADA, Congress chose to protect individuals who have mental impairments as well as those with physical impairments. Americans with Disabilities Act of 1990, §§ 2 et seq., 42 U.S.C.A. §§ 12101 et seq.; 29 C.F.R. § 1630.2(h)(2). McAlindin v. County of San Diego, 192 F.3d 1226 (9th Cir. 1999);

Under both state and federal antidiscrimination legislation, it is **unlawful** for employer to **discharge** person on basis of race or otherwise discriminate against person in compensation or in terms, conditions or privileges of **employment**. West's Ann.Cal.Gov.Code § 12900 et seq.; **Civil** Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

In *Teamsters v. United States* (1977) 431 U.S. 324, 97 S.Ct. 1843, 52 L.Ed.2d 396, the Supreme Court stated that conceptually the theory of " '[d]isparate treatment' ... is the most easily understood type of discrimination. The employer simply treats some people less favorably than others because of their race, color, religion, sex or national origin." ( *Id.*, at pp. 335–336, fn. 15, 97 S.Ct. at p. 1854, fn. 15.)

[4] To prevail under the disparate treatment theory, an employee must show that the employer harbored a discriminatory intent. In most cases, the complainant will be unable to produce direct evidence of the employer's intent. Consequently certain rules regarding the allocation of burdens and order of presentation of proof have developed in order to achieve a fair determination of "the elusive factual question of intentional discrimination." ( *Texas Dept. of Community Affairs v. Burdine* (1981) 450 U.S. 248, 255, fn. 8, 101 S.Ct. 1089, 1094, fn. 8, 67 L.Ed.2d 207.) A three-part analysis was mandated by the Supreme Court in the case of *McDonnell Douglas Corp. v. Green* (1973) 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668:

1) The complainant must establish a prima facie case of discrimination;

2) The employer must offer a legitimate reason for his actions;

3) The complainant must prove that this reason was a pretext to mask an illegal motive.

The *McDonnell Douglas* model for a prima facie case is as follows: The complainant must show "(i) that he belongs to a racial minority; (ii) that he applied and was qualified for a job for which the employer was seeking applicants; (iii) that, despite his qualifications, he was rejected; and (iv) *****891*** that, after his rejection, the position remained open and the employer continued to seek applicants from persons of complainant's qualifications." ( *McDonnell Douglas v. Green, supra,* 411 U.S. 792, 802, 93 S.Ct. 1817, 1824, 36 L.Ed.2d 668.) As this test focused only on discriminatory hiring practices, the Supreme Court acknowledged in a footnote that the precise elements of a prima facie case would vary according to differing theories of discrimination and different factual situations. ( *Id.,* at p. 802, fn. 13, 93 S.Ct. at p. 1824, fn. 13.)

**First Cause of Action**

**Wrongful Termination)**

1. Any such employee shall also be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer.'" (City of Moorpark v. Superior Court, supra, 18 Cal. 4th at p. 1150.) Plaintiff should be entitled to these benefits under this case because of defendant's violation.
2. Federal laws prohibit discrimination on the basis of age, race, gender, disability, religion or national origin. State laws offer extra anti-discrimination protections,

such as terminations due to sexual orientation or HIV/AIDS status. Employees terminations based on personal factors such as those covered by Title VII of the Civil Rights are illegal and therefore, wrongful terminations. In addition, wrongful terminations also occur when a worker is discharged for complaining about workplace discrimination or participating in a co-worker's discrimination case.

3. Sometimes employers discharge workers in retaliation for certain actions. This is a wrongful termination. Employers cannot retaliate against workers for submitting a workers' compensation claim; reporting a safety violation to the Occupational Safety and Health Administration; joining a union or taking part in legal union activities; or reporting wage violations to the Department of Labor. In addition, the Sarbanes-Oxley Act protects employees (whistleblowers) who report fraud or other criminal acts committed by their employers.

**Second Cause of Action**

**(Discrimination Based on Race and Disability)**

**California's** FEHA provides in pertinent part: "It is an **unlawful employment** practice, unless based upon a bona fide occupational qualification, or, except where based upon applicable security regulations established by the United States or the State of **California**: [¶] (a) For an employer, because of the race, ****54*** religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, ... marital status, sex, ... age, or sexual orientation of any person, to refuse to hire or **employ** the person or to refuse to select the person for a training program leading to **employment**, or to bar or to **discharge** the person from **employment** or from a training program leading to **employment**, or to discriminate against the person in compensation or in terms, conditions, or privileges of **employment**." (gov.code, § 12940 (hereafter section 12940(a)); all further statutory references are to this code unless otherwise indicated.)

In addition, section 12921, subdivision (a) says: "The opportunity to seek, obtain, and hold employment without discrimination because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, or sexual orientation is hereby recognized as and declared to be a civil right." Section 12993, subdivision (a) instructs that the FEHA "shall be construed liberally for the accomplishment of [its] purposes." Here Defendant's Discriminated against Plaintiff due to her physical limitations of not being able to work all of the hours they wanted her to work unlawfully with no pay.

## Third Cause of Action
## (Intentional Infliction of Emotional Distress)

3. Intentional Infliction of Emotional Distress is a volitional act, done with the requisite intent, which amounts to extreme and outrageous conduct and which causes plaintiffs to suffer severe emotional distress. See Cal. Code Civ. Pro Section 340. There is a right to recover damages for Emotional Distress alone, without consequent physical injuries, in cases involving extreme and outrageous intentional invasions of one's mental and emotional tranquility. See Alcorn v. Anbro Engineering, Inc., 2 Cal. 3d 493.

## Fourth Cause of Action
## (Negligent Infliction of Emotional Distress)

4. Negligent Infliction of Emotional Distress is a legal concept that one has a legal duty to use reasonable care to avoid causing emotional distress to another individual. If one fails in this duty and unreasonably causes emotional distress to another person, that actor will be liable for monetary damages to the injured individual. California Civil Code Section. In Molien v. Kaiser Foundation, 27 Cal. 3d 916, was a case decided by the Supreme Court of California that first recognized a direct victim of negligence can recover damages for emotional distress without an accompanying physical injury. Here, Plaintiff is victim of Defendants discrimination against Plaintiff's disability and age. Defendants wrongful termination has caused Plaintiff's severe emotional distress.

**WHEREFORE**, Plaintiffs pray for relief as follows: Back Pay, Compensatory Damages,

1. Compensatory Damages-$180,000.00-Lost Wages
2. Special Damages- $200,000.00
3. Punitive Damages-$300,000.00
4. An award of plaintiff's costs, expenses and such other and further relief as the Court may deem just and proper including, but not limited to, Plaintiffs court costs and attorney fees.

5. Total Award: $680,000.00

DATED: 04/18/2017 ______________________________

Oampi Sangyimphan – Plaintiff-Pro Per

PROOF OF SERVICE

I, John Domantay the undersigned declare: I am now and at all times herein mentioned have been over the age of eighteen years, residing at 3245 Geary Blvd, San Francisco, CA 94159 and not a party to the within action or cause. On the date set forth below, I served the below-stated person(s) the following:

MR: ROSS HYSLOP.
ON BEHALF OF DEFENDANTS.
MRS: SHERRY TSAI & MR. MARK DRAHEIM

(X) BY MAIL on the following party (ies) in said action, by placing a true copy thereof enclosed in a sealed envelope addressed as shown below. I caused such envelope with postage thereon fully prepaid and placed in the United States mail CERTIFIED. California. U.S. POSTAL SERVICE. in SAN MATEO CALIFORNIA.

TO: MR. ROSS HYSLOP.
501 W. BROADWAY. SUITE 1025
SAN DIEGO CA. 92101
PHONE. 619_2373000

(X) STATE I declare under penalty of perjury that the information is true and correct.

Executed on 04 | 18 | 2017 at San Francisco, California

John Domantay